

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 24-CR-20178-MOORE/Elfenbein**

**UNITED STATES OF AMERICA,**

V.

## **DIEGO ROMAN VIZCON,**

**Defendant.**

## **REPORT AND RECOMMENDATION ON CHANGE OF PLEA**

**THIS CAUSE** is before the Court following an Order of Referral to conduct a proceeding for acceptance of a guilty plea by Defendant Diego Roman Vizcon (“Defendant”), ECF No. [14]. Based upon the status conference on Defendant’s change of plea conducted on July 31, 2024, this Court makes the following findings and recommends that the referral to the undersigned United States Magistrate Judge to conduct the change of plea proceeding, **ECF No. [14]**, be **VACATED**.

1. During the status conference on Defendant's change of plea, the undersigned advised Defendant of his right to have these proceedings conducted by the District Judge assigned to the case, and that this Court was conducting the change of plea hearing pursuant to an Order of Referral from the District Court. I further advised Defendant that the District Judge assigned to this case would be the sentencing judge and would make all findings and rulings concerning Defendant's sentence. I advised Defendant that he did not have to permit the undersigned Magistrate Judge to conduct this hearing and could request that the change of plea hearing be conducted by the District Judge assigned to the case, the Honorable K. Michael Moore. When asked whether he consented on the record, the Defendant requested additional time to speak with his counsel. After a brief recess, the Defendant indicated that he preferred to have the District Judge conduct his change of plea proceeding.

2. As the Defendant appeared surprised by the issue of consent to have the undersigned Magistrate Judge conduct the change of plea hearing, the undersigned gave him one week to discuss the issue with his counsel and inform the undersigned's chambers via email as to how the Defendant wished to proceed regarding the change of plea hearing. *See* ECF No. [17]. Defendant's counsel thereafter informed the undersigned's chambers that Defendant does not consent to have the undersigned Magistrate Judge conduct his change of plea proceeding and desires instead for the District Judge to conduct the change of plea hearing.

3. Therefore, the undersigned **RECOMMENDS** that the Paperless Order of Referral to Magistrate Judge, **ECF No. [14]**, be **VACATED** and that the Defendant's change of plea be scheduled before the Honorable K. Michael Moore.

The Parties will have **FOURTEEN (14) CALENDAR DAYS** from the date of service of this Report and Recommendation within which to file written objections, if any, for consideration by the United States District Judge. Pursuant to Federal Rule of Criminal Procedure 59(b), Eleventh Circuit Rule 3-1, and accompanying Internal Operating Procedure 3, the Parties are hereby notified that failure to object in accordance with 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the District Court's order based on unobjected-to factual and legal conclusions. *See Thomas v. Arn*, 474 U.S. 140 (1985).

**RESPECTFULLY SUBMITTED** in Chambers at Miami, Florida, on August 16, 2024.

  
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MARTY FULGUEIRA ELFENBEIN  
UNITED STATES MAGISTRATE JUDGE

cc: The Honorable K. Michael Moore  
Counsel of record